go over because they know they will have to pay and then get reimbursed by National if they do.

Mr. Weinstein:

Q. You say they do not come into Oregon because—

Mr. Jaureguy: Just a moment. I object to that as a leading question.

Mr. Weinstein: It is not a leading question. I am asking what the witness' testimony was.

Mr. Jaureguy: No. You are telling him what his testimony was.

The Court: That is what he said. They don't come into Oregon, generally.

Mr. Weinstein:

1055. Q. I am going to show you Exhibit 1943 and ask you whether or not the correspondence in there by you is typical of the type of correspondence that you have to have because of the doctors' refusal to take tickets?

Mr. Jaureguy: I object to that as calling for a conclusion of the witness.

The Court: He may answer.

A. Those letters which I have written and which have been written to National by me are typical of what we have, certainly. I think this whole thing is typical of some of our cases down there where doctors have refused to accept payment from the National Hospital Association.

Mr. Weinstein:

Q. When doctors refuse to accept National tickets, what procedure then do the men take? I am talking particularly of the doctors in Oregon. A. Oftentimes they will come to me with statements from the doctors, and I will write National and they will send a check to the doctor or, if the patient has already paid the bill, I will write in to National and they will reimburse him for the amount that he has paid.

Mr. Weinstein: Your witness.

Cross Examination

By Mr. Jaureguy:

Q. National has never said they wouldn't pay the men until after they paid the doctors, have they? A. National

has often paid the doctor and then the man has to
1056 pay it afterwards because the doctor would not accept it.

Q. Has National ever said they would refuse to pay a bill unless the man paid it first? A. No, not to my knowledge.

Q. The men can get their statements from the doctors and send those statements in themselves to National, can't they? A. They can.

Q. In fact, that is what was done in those cases, and in this particular case Dr. Holcomb sent it back with a letter explaining why, and then National sent their checks to the men? That is correct, isn't it? A. I think in this particular case—it is quite a long story. I will go into it, if you would like me to.

Q. It may be a long story, but the question I asked you is merely whether or not that is not the way it happened? A. The way it happened, the man was not supposed to have been covered by National. I mean the company which he worked for was late in sending in their report so that National thought he was not covered.

Q. Yes. A. And then I think originally, when he wrote, they turned him down.

Q. That is, after he had gotten service from Dr. Holcomb? A. That is right, because they figured he was not covered; according to their records he was not. I
1057 took it up with them, with some additional information, and they agreed that he was, and should have been covered, so they, in turn, mailed a check to the doctor, as this letter in here states.

Q. Yes. A. The doctor received the check and wrote a letter to Mr. Badger, which I saw, stating that they had received the check from National, but they did not do business with National, so they were returning it to National, and they would accept a personal check from him to close his account.

In turn, I asked National to reimburse Mr. Badger for the money he paid the doctor.

Mr. Jaureguy: I wonder if I can see that exhibit?

A. However, if I had seen this patient before he mailed the check to the doctor, I can assure you it would not have been mailed.

Q. That is, you would have advised the man not to pay

the doctor? A. That is right, in view of the fact that they had received payment for the services from the National Hospital Association and returned it.

Q. I notice the bill from Drs. Holcomb & Burns is dated April 25, 1949, so I take it that the services were rendered before that time? A. I think it was sometime in the latter part of March.

Q. That the services were rendered? A. Yes.

1058 Q. Then, The check from National is dated July 1, 1949, so that it took them from the last of April to the first of July to come to the conclusion that this man was covered, as I understand? A. No, I don't think it took them quite that long. I think if you will look through these letters a little longer you will find where they notified that they had the check. I think a letter to me will tell you there. It is dated about June 30th.

Q. June 30th. The services were rendered the last of March. The doctors' bill was tendered April 25th and on June 30th—on May 24th you wrote the Association. A. No, Mr. Badger did.

Q. Mr. Badger did, on April—on May 24th, apparently contending that he actually was covered, and by June 30th they had found out he was covered and, so, on the first bill they sent a check to Drs. Holcomb & Burns. That is about it, isn't it? A. Substantially, I suppose. The delay there is something that could happen very easily.

Q. Oh, I suppose if we want to argue about National, you could argue for them and I could argue against them, but we won't take the time for that.

When they would go to a doctor, did they have some kind of a ticket that they took? A. They have had, yes. I think there is one ticket on there, I believe. Maybe there isn't. I thought I saw one somewhere, waving

1059 around.

Q. I think I did, too. Yes, I have one here.

A. That is the ticket.

Q. This ticket is signed by C. J. Schmand. Is that right, Schmand? A. That is pretty close to it; he calls it Schmand.

Q. It gives the doctor information that this ticket is issued for the month of March, 1949. That is the time he got the service from Dr. Holcomb? A. That is true.

Q. And that he began paying NHA dues in 1945, and that he was still in the employ of the company, and that

the amount collected was $3.50, and then this ticket was issued March 28, so I suppose if he handed that to Dr. Holcomb, Dr. Holcomb would not have any trouble seeing that the man was covered by the National Hospital Association. That is correct, isn't it? A. That is correct. But that still would not make him accept it.

Q. Would not make him accept it? Even though that ticket was written, National protested for almost two months, more than two months, that they did not cover this man, didn't they? A. No, I don't think that is true.

Q. The services were rendered the last of March and it was along the end of June before the Association finally told you that they had decided the man was covered. That would make three months, wouldn't it? The last
1060 of March to the last of June? A. They never had the bill by the last of March, I don't suppose. He dated it April 25th.

Q. Yes, that is right. It would be two months. In spite of the fact that this ticket had been signed for that man and presented to Dr. Holcomb, showing that he was covered, the Association, for two months, then, claimed he was not? A. But they got the check and they would not even accept the check from National, which was certainly worth more than a ticket.

Q. I would think so. A. Yes.

Mr. Jauregny: It seems as though it is, anyway, from what you have testified to. That will be all.

(Witness excused.)

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1061 Dr. Marion V. Klingler was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Are you a physician practicing in the State of Oregon? A. Yes, sir, I am.

Q. Since when have you been licensed to practice? A. I passed my examinations in 1942. I did not practice. I filed my papers at that time in the County Courthouse. I did not practice in Oregon, having been in the service until 1945, when I was discharged.

Q. Are you a member of the Oregon State Medical Society or the Multnomah County Medical Society? A. I am not.

Q. Are you practicing in this city? A. Yes.

Q. In Portland? A. In the St. Johns district, yes.

Q. Have you had one or more occasions to apply for membership in the medical societies? A. I have had two opportunities.

Q. Would you tell us what occured with respect to the first time you applied, and give us the approximate date?

A. It was late in 1945 or early in 1946, and at that
1062 time I did file my formal application, with my credentials, showing where I had passed through the medical school and then where I had served a satisfactory internship here in town at Emanuel Hospital, and at that time these three doctors appeared before the Board.

Q. That is, you appeared before the Board? A. All three men; that is right. The only man that I know of that was there was Dr. Margason. At that time Dr. Newsom, who was in the same office as I, and Dr. Walter Browne were present.

Q. Were they applying for membership, too? A. They were applying for membership.

Q. When I say "they" I am talking about Doctor— A. Dr. Newsom and Dr. Browne, that is right. We were all there for the same purpose.

At that time the topic of National Hospital Associations came to the front, and they wanted to know whether we, in our office, Dr. Newsom and myself, and my other partners in St. Johns were accepting National or Industrial hospital patients. I told them that we were. That is, Dr. Newsom and myself, and the other doctor said he had previously been taking them, but that he was no longer going to accept them.

I don't know what has happened as a result of that meeting to Dr. Browne. I do know Dr. Newsom nor I received any information from the committee whatever.

Q. How did the occasion arise for your re-apply-
1063 ing? A. Then about two years ago I began to to receive the Multnomah County Medical Society bulletin that is published periodically and, after three or four months, having received it, I thought probably I had been accepted, that my application had been reviewed and

accepted; so, after three or four months, having received no word from them in the form of a letter, I sent them a letter.

Let's see, this is 1949. It was about, oh, the middle of 1948, probably in the summer of 1948 that I wrote them a letter, and asked them had I been accepted by the committee, and told them that I had been receiving the bulletin and I would like to know my status with the Multnomah Medical County Medical Society, because the only time I ever received any information from them had been when they had some information that they wanted to get out to me or wanted something.

So they replied and asked me to come down and be reviewed by their Board of Censors or Credentials Committee, whatever name they call it by, and it was probably about fourteen months ago—it was shortly after the summer of 1948 or early fall that they requested me to come down and talk to them again, which I did.

Q. Who was present at that time? A. Well, the only members I know of for sure—I remember Dr. Chuinard, and I believe Mr. Coughlin was there. There were about four or five, maybe five other members. I believe
1064 Dr. Leitch was there, but I am not sure of that right now. There were about seven members, as I recall.

I was there approximately an hour and a half. The meeting was called for 8:00 o'clock and I got out of there at 9:30, and I was the only one there at that meeting.

We spent practically the entire time that I was thre discussing the pros and cons of the Oregon Physicians' Service as against the prepaid plans of other organizations, namely, the National or the Industrial Hospital Association whose tickets, as they are called, we were taking.

They said they frowned upon any members of the Medical Society accepting any tickets of National or Industrial Hospital Association, and during the talk it came out that as long as we took them in our office—At that time there were three doctors, Dr. Newsom having left us about a year and a half ago, but there are still two doctors and myself—that as long as we accepted tickets or as long as I accepted tickets my application would not be considered favorably.

Then I said, "Suppose I work it this way: If I will promise you that I will not accept any National or Industrial Hospital tickets myself, and let my two partners handle those cases, will that be acceptable?" And I was given an emphatic No, on that.

And when they said "No" I said, "Well, that is the way the case will have to remain because I still have
1065 two partners, and if they accept them and you will not accept me as a member of the Multnomah County Medical Society, with my two partners accepting Industrial and National Hospital cases, and you will not let me in, that is the way it will be," and that is the last thing I said.

Mr. Marcus: I would like at this time, your Honor, to ask that if there was any record made of this hearing that it be produced.

The Court: Do you know about it?

Mr. Jaureguy: I know nothing about it, your Honor. This is the first I ever heard of it.

Mr. Marcus: That is all, then.

Mr. Jaureguy: We have produced now this correspondence in connection with the other case that was mentioned this morning. I hand it to Counsel.

The Court: For the record, what case?

Mr. Marcus: Wilford Belknap.

Cross Examination

By Mr. Jaureguy:

Q. Do you know whether Dr. Chuinard takes tickets of hospital associations? A. I don't know.

Q. Do you know most of the doctors in the State of Oregon do, don't you, take tickets? A. That is
1066 right.

Q. So they must have had something against you or thought they had that they did not have against most of the doctors in the state? A. They did not have anything against me.

Q. I mean, for some reason, they said they would not let you be a member of the Society if you took tickets, and yet you know most of the doctors in the state do take tickets. I was just wondering— A. I don't know whether that statement is correct or not. I don't know that most of the doctors in the state do take tickets of the National or

Industrial hospital associations. If you are referring to all tickets, yes, I will agree to that; but I don't think that most doctors in the state do take tickets of the Industrial or National Hospital members.

Q. You do not? A. I don't think so. That is my opinion.

Q. Whom were you practicing with? A. Dr. Phillips and Dr. Staats.

Q. Dr. Phillips is a member of the Society? A. That is right. I don't know the background of this now, but a number of years ago there was quite a situation occurred in which the same problem came about, in which the old association sponsored by the Multnomah County Medical Society came up against quite a few of the other doctors in this county, and quite a few of them were asked to re-

1067 resign. Some of them did resign. Dr. Phillips said he would not resign. He said, "If you want me to resign, you will have to take it to court." He said, "I don't think you can make me resign, legally," and he did not resign but is still a member.

Q. He is still a member? A. Yes.

Q. He is one of your partners and he takes tickets? A. That is right. But, believe me, the pressure has been brought to bear upon him many times not to take them.

Q. Is he one of the OPS cooperating physicians? A. Yes, sir.

Q. That is, he takes tickets of OPS? A. That is right.

Q. And takes tickets for National? A. That is right. Dr. Staats, my partner, has applied once, about ten years ago, and his application is still pending.

Q. Your partners, then, are who? A. Dr. Phillips and Dr. Staats.

Q. You say Dr. Staats is not a member of the Society? A. He is not a member of the Society. He applied over ten years ago and he has never heard form it.

Q. Do you have a specialty, or are you in general practice? A. I am a general practitioner.

Q. What hospital do you practice in? A. I prac-

1068 tice in two hospitals, Emanuel Hospital and Holladay Park.

Q. Emanuel and Holladay Park? That is, you are a member of the— A. A member of the staff.

Q. A member of the staff at both of those hospitals? A. That is right.

Q. How long have you been a member of the staffs? A. I have been a member of the hospital staff since I was discharged from the service in 1945, at Emanuel. I served an internship there in 1941 and 1942, and I have been a member of the Holladay Park Hospital staff for approximately a year.

Q. They are both general hospitals? A. That is right.

The Court: Do you do surgery?

A. I do general work.

The Court: Do you do surgery?

A. Yes, sir.

The Court: At both of these hospitals?

A. Both hospitals, yes.

The Court: Have you ever applied at any other hospital and been turned down?

A. No, sir. I was also a member of the Vanport Hospital until Vanport was swept away. I was a member then.

The Court: Where did you get your education?

A. Pre-medical education at the University of Idaho
1069 and my medical education at the University of Oregon Medical School, here in Portland.

The Court: Did you work anywhere else?

A. I have never worked anywhere outside of the city here, other than in the Army.

The Court: In what branch of the Army were you?

A. I spent three and a half years overseas with the infantry.

The Court: As a doctor?

A. Yes.

Mr. Jaureguy:

Q. You think that this last meeting was late in 1948? A. Somewhere around that time. It has been a little over a year ago, because it came about before this case was instituted.

Q. About how long before, would you say? A. I don't know, probably in the summertime of 1948.

The Court: How do you relate the two things in your own mind, instituting the case and your experience?

A. Did you ask me?

The Court: Is there any significance about that, the fact that you are relating the two things together? Did your experience have anything to do with this case? That is what I am getting at.

A. My experience I have here?

The Court: What you have been telling me. How did you happen to fix the date?

1070 A. Well, I was just trying to fix in my own mind about what time I had applied, and I do remember that I wrote a letter and was interviewed before the case came up.

The Court: Do you want to make any inquiry on that before you conclude your cross examination?

Mr. Jaureguy: It may be desirable. However, I want to ask this:

Q. Did you keep copies of this correspondence? A. No, I do not have.

Q. You did not keep copies of any of your letters? A. I kept some of them.

Mr. Marcus: I would like to ask the defendants to produce copies of the correspondence, then.

Mr. Jaureguy:

Q. You did not keep any copies of this correspondence that we are talking about? A. I looked for them—I looked for the letter I wrote to the Medical Society in 1948, asking my status at that time, and I couldn't find that. It was just an inquiry on my part: Am I in or am I out?

The Court: That is all, I guess.

Mr. Jaureguy: Yes.

The Court: You had better stay in the room a little while, Doctor. There may be further questions. Do you have some other witnesses?

(Witness excused.)

1071 Mr. Marcus: That is all, as far as witnesses are concerned. If your Honor wants to recess for about fifteen minutes, I will try to get these things in shape.

(Recess.)

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DR. MARION V. KLINGLER, a witness on behalf of Plaintiff, having been previously duly sworn, was recalled and further testified as follows:

Cross Examination (Continued)

By Mr. Jaureguy:

Q. You testified, I think, in that meeting in October somebody told you that as long as you took tickets they would not admit you to the Society.

Mr. Marcus: Let us make it clear. He testified it was either in the late summer or early fall.

Mr. Jaureguy: I think I will let this question stand, unless the Court suggests otherwise.

A. By "tickets" you are referring to those of the National—

Mr. Jaureguy:

Q. Yes. A. —of the Industrial Hospital Association?

Q. Yes. A. Would you repeat that question now?

Q. You testified in that meeting in 1948 that somebody, at that meeting, told you that unless you quit taking
1072 tickets they would not admit you to the Society? A. That is right.

Q. Who was that? A. Well, as I said formerly, the only man that I know that was ever there of the six or seven who were there was Dr. Chuinard, and I believe Mr. Coughlin was there. I don't know about Dr. Leitch, whether he was there or not. Does that answer your question?

Q. No, that does not answer my question. I want to know who made that statement to you? A. I don't know, but one of the members told me that.

Q. You knew them all at the time, didn't you? A. No, I don't know them.

Q. Was it Dr. Chuinard? A. I don't know that it was Dr. Chuinard. I am not going to say because if it was not Dr. Chuinard, it was one of the other men.

Q. You do not recall who it was? It was somebody there but you do not recall who it was? A. I don't know who it was. The minutes of the meeting will tell who was there, but I don't know which one of the members said it.

Q. Was it Clyde Foley? A. I don't know.

Q. Was it Mr. Coughlin? A. I don't know.

1073 Q. So it might be—it might have been one of these three or it might have been somebody else? A. That is right.

Mr. Jaureguy: That is all.

Mr. Marcus: That is all.

(Witness excused.)

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Mr. Marcus: Sometime today, your Honor, I would like to offer in evidence parts of the Yamhill County Medical Society minutes and the OSMS minutes which we may consider relevant, and with your Honor's permission I would like to do that out of your Honor's presence.

One of the items to take up now is the matter of those documents subpoenaed several months ago.

The Court: I would prefer to hear your arguments. I am going to say something about that before you leave for the East.

Mr. Marcus: As your Honor knows, we have had someone typing up a list of the members of the Oregon State Medical Society. That work is not yet completed. The girl tells us that she expects to be through by the end of the week, and at that time we would like to offer that list in evidence.

In this offer I would like to make this afternoon we will also include some of the answers to interrogatories by the defendants, that we have not yet offered in evidence.

1074 I do not know whether it is formally necessary or not, but for the sake of the record we do want to have all the hearings had before your Honor prior to the actual trial to be considered as a part of the record.

The Court: It is so understood.

Mr. Marcus: Your Honor, with respect to the exhibits, either Thursday or Friday of this week I hope to file a statement of the parts of the various exhibits we are offering and the purpose for which they are being offered.

It is my understanding that defendants' counsel, two weeks before they are to begin their case, will specify their objections.

I do not know whether your Honor would like to have arguments with respect to those objections before we come back or not, or whether your Honor would like a written statement by us with respect to their objections, or what procedure your Honor would like to follow.

The Court: You file it if you want to. I will leave this with you. Of course, I will hear anybody who wants to be heard on the objections.

Mr. Marcus: Subject to producing certain witnesses, if necessary, as a result of any exhibits being rejected, we are resting our case at this time.

We do want to renew our motion with respect to the documents we have asked to be subpoenaed, and in
1075 that connection, for the record I would like to file a statement of reasons why we think that motion should be granted.

The Court: It may be filed, but, as I said a minute ago, I am going to ask you to make some remarks about that later.

PLAINTIFF'S STATEMENT WITH RESPECT TO MOTION FOR INSPECTION OR SUBPOENA DUCES TECUM, WITH RESPECT TO DOCUMENTS OF THE OREGON STATE MEDICAL SOCIETY AND THE MULTNOMAH COUNTY MEDICAL SOCIETY.

The Court having reserved decision with respect to plaintiff's Motion filed in August of this year, for the issuance of a subpoena duces tecum to the defendants Oregon State Medical Society and Multnomah County Medical Society, or in the alternative, for leave to inspect the documents referred to in said Motion, plaintiff respectfully files this statement of its position with respect to that Motion.

Plaintiff believes that its exhibits, and the evidence produced at the trial, prove the allegations of its complaint, but since the Court, and not plaintiff, must decide this case, counsel for plaintiff believe they have an obligation to this Court, and to the Government, to present to the Court relevant evidence which is not merely cumulative. Counsel believe that they have an obligation to the Court, and to the Government, to exercise their judgment as to what evidence should be offered, and that such judg-
1076 ment cannot be exercised without being permitted to examine the documents requested in the Motion. Counsel for plaintiff state that, in view of the evidence already offered, counsel would not expect to introduce in evidence any considerable part of the correspondence and other records of defendants called for in the subpoena, but would want to introduce such correspondence and records as they believe should be called to the Court's attention.

Plaintiff believes that such Motion should be granted before plaintiff rests its case, for the following reasons:

(1) Plaintiff believes that the correspondence of these defendants will show that many acts in pursuance of the conspiracy charged have been performed during all of the years 1936 to 1949, and that in many instances an intimate connection with this conspiracy on the part of individual defendants will be shown by such correspondence.

(2) It is believed that such correspondence would make doubly clear the admissibility of some of plaintiff's exhibits, as to which challenge may be made by the defendants.

(3) It is believed that the correspondence would clarify any incidents referred to in the exhibits thus far offered in evidence, or referred to at trial, as to which any ambiguity might exist.

(4) Plaintiff regards itself as seriously hampered in cross-examination of defendants' witnesses in not
1077 having access to the correspondence of the Oregon State Medical Society and the Multnomah County Medical Society.

(5) Plaintiff believes that disciplinary proceedings have been had, or threatened, with respect to members of the said Societies since 1941, which the records of the Societies relating to disciplinary proceedings, since 1941.

(6) With respect to the County Medical Societies who are defendants in this case, plaintiff has been advised that these Societies have not been able to produce any correspondence, with the exception of one. It is believed that the correspondence of the Oregon State Medical Society and the Multnomah County Medical Society would show correspondence between those Societies and the County Medical Societies relevant to this case, and indicative of the participation by these County Medical Societies in the conspiracy.

We refer to two incidents which illustrate the points made:

1. According to exhibits and testimony, Drs. Shields and Beck notified the Multnomah County Medical Society of their intention to resign from the Oregon Medical Service Bureau (Weston). We believed they had been subjected to disciplinary proceedings, and on October 26, 1949, called
for defendants to produce records of any disciplin-
1078 ary proceedings in which those doctors had been involved. Next day, those records were produced.

On examination of those papers, it was found that not only had Drs. Shields and Beck been called in for disciplinary proceedings, but also a number of other doctors about whom we had had no knowledge. One doctor whose name appears in those papers as subjected to disciplinary proceedings is that of Dr. Kingery. In evidence, subject to objection by defendants, is Exhibit No. 45, which is a letter from Dr. Kingery to National Hospital Association, to the effect that the Board of Censors had told him that continued association with National Hospital Association would result in his expulsion. We had intended to argue that this letter was admissible for the truth of what was said, as well as the state of mind of the doctor. Without those papers in which Dr. Kingery's name was found, we would have had to rely on general principles of evidence, without the confirmatory proof in the transcript turned over to us on October 27, 1949. In our opinion, the disciplinary records of the defendants mentioned would reveal similar confirmatory proof as to other doctors, as would their correspondence.

2. We were informed, on October 26, 1949, that in Yamhill County the local medical society, *in association* with the Oregon State Medical Society and the Multnomah County Medical Society, had taken action to prevent
1079 a cooperative health organization in McMinnville from getting under way in 1947. We had to prepare to present that situation, and to present it to the Court, without having seen defendants' correspondence, which we believe exists, in respect to that situation. The records of defendants we have sought to subpoena might well reveal other situations similar to that in McMinnville.

Dated: November 1, 1949.

Mr. Marcus: One other thing, your Honor: Among the exhibits we filed a document called Document Source Record, indicating where the various documents came from. We have revised that list and I would like to offer this as an exhibit.

The Court: It is admitted, provisionally.

(Revised Document Source Record was thereupon received in evidence and marked Plaintiff's Exhibit No. 1944.)

Mr. Marcus: I believe that is all, your Honor, except for the argument that is to come up tomorrow. Does your Honor want that in the morning?

The Court: Oh, yes. You will be ready in the morning, won't you?

Mr. Marcus: Yes.

Mr. Jaureguy: There are one or two things that Counsel has said that are disconcerting to me, your Honor.

1080 I thought they were going to rest. Now, from what he said, when we come back on December 13th I don't know whether they are going to have a lot more witnesses that they are going to produce or whether we are to proceed.

I know it would be a very great inconvenience to many doctors if we have to tell them we do not know when we are going to call them, whether on December 13th or January 1st.

The Court: I imagine you can be ready to go ahead at that time. I will clear your minds right now of one thing, as to this motion to produce which Mr. Marcus and his colleagues have laid so much emphasis on.

I take it, in the preparation of your case, Mr. Jaureguy, that you and your staff will examine everything in the records of the Society that you have that is covered by that motion. I have just been looking through it again. Of necessity, you will do that.

Mr. Jaureguy: We have examined everything that all of the county societies have outside of the Multnomah County Medical Society and—

The Court: I am speaking now of the motion that I have which is addressed only to the State Society and the Multnomah County Society.

Mr. Jaureguy: Everything that Mr. Foley and his associates could find in the record has been examined. We have not gone through that mass.

1081 The Court: What I have just said is that no doubt in the preparation of your case between now and December 13th you will examine all of that data. Of necessity you will do that.

Mr. Jaureguy: No, we are not going to go through all the records. We are going to go through these things that Mr. Foley has found that he thinks have some connection with this matter.

The Court: That is what we are talking about.

Mr. Jaureguy: That is right.

The Court: Anything in the shape of records that you have that have a bearing on the questions in this case.

Mr. Jaureguy: That is right.

The Court: Of necessity you will do that, being the kind of a lawyer that you are.

Now, then I will now rule on Mr. Marcus' motion. I want you to bring in everything that you find during that examination, even though you may not deem it of any value to you in the presentation of your case. In other words, I am granting Mr. Marcus' motion.

Mr. Jaureguy: I want to come back to the other matter, your Honor, and that is that it would seem to me that we should proceed until the Government gets through with its case, so that we will know what we are going to do. Whatever I said about two weeks before coming back, I meant that would be the outside date for having my objections in.

I think, then, in view of the fact that he apparently
1082 is not going to rest until your Honor rules upon the objections to the testimony and the exhibits and those things, and in view of the fact that he may want to bring in a lot of witnesses, that we should just proceed and if we get our objections in this week, then some day this week or next week your Honor could then pass on the objections. Then, if he wants to bring in any more witnesses, let him bring them in.

The Court: Are you planning to make your objections this week?

Mr. Jaureguy: I am hoping to, if your Honor believes the suggestion I am making about getting an early ruling is a good one.

The Court: I will rule at once, whenever you make them.

Mr. Jaureguy: Then, when you rule, I take it that we will have a further hearing so that counsel can put in the rest of his case, if he has any.

The Court: Will you be prepared this week to comply with the Notice to Produce?

Mr. Jaureguy: Or, I think so. Your Honor, you can understand my hesitancy there: If they went through, they might pick up something that they think has some bearing on the case—

The Court: Evidently they need your records. Now, I am asking you to produce what you think has a bearing.

Mr. Jaureguy: Yes. I will produce at any time the documents that Mr. Foley, during the course of his
1083 various examinations, has pulled out, thinking maybe they had something to do with the case.

The Court: Are you prepared to do that this week?

Mr. Jaureguy: Yes, I can do that this week.

The Court: Do you want to set a date this week when you will file your objections and also comply with the motion to produce?

Mr. Jaureguy: I would rather have the rest of the week. I have not seen his list yet and I do not know exactly the amount of work that is going to be involved in looking at each document separately and making objections. I figure if I had to put in one minute on each one it would take me over thirty hours. I have not made up my mind yet and I cannot until I see what he is going to produce. I do not know yet how much of a search I am going to have to make of the various documents.

Mr. Marcus: Your Honor, I have often been in disagreement with Mr. Jaureguy but for once I do want to concur in what he says. He does have a problem. I have spent some thirty or forty hours going through just about half of the documents, merely to pick out particular portions. In a document consisting of five pages of minutes, for instance, one paragraph alone deals with—

The Court: I know what you gentlemen have to contend with, what you are talking about. It affects you a great deal more than it does me. What Mr. Jaureguy is
1084 saying is that he would like to have your case brought to an end before you leave for the East.

Mr. Marcus: I am merely saying, your Honor, that when we file this statement I think he is going to have quite a job going over it.

The Court: All right. That will carry it into sometime next week.

Mr. Jaureguy: It depends on his statement. Do I understand, your Honor, that when I file my objections you will promptly rule?

The Court: That is right, at once.

Mr. Jaureguy: Then, I take it your Honor will then set a time when we may continue.

The Court: At that time I will expect to hear Mr. Marcus and you discuss your theories of the case.

Mr. Jaureguy: I take it, then, your Honor will ask us to come here to hear your ruling on the objections?

The Court: That is right.

Mr. Jaureguy: Then there is another thing—

The Court: In other words, we are putting off one week, or until next week, what we were going to do to-

morrow, as far as that is concerned, and also to bring his case to a conclusion.

Mr. Jaureguy: Tomorrow we won't come back to make our arguments?

1085 The Court: Not unless you want to.

Mr. Jaureguy: I think it would be better after your Honor rules on the objections. Otherwise we might object to a lot of exhibits that are not in evidence.

The Court: That seems logical, although logic is not often good sense.

Mr. Jaureguy: All right.

Mr. Marcus: That is all right with me, your Honor.

Mr. Jaureguy: One more thing, your Honor: Quite a long time ago, two or three months or more ago, I brought up the question of our answers to interrogatories, and I stated that I thought counsel for the plaintiff should advise us as to the respects in which they agreed that our answers told the truth and the respects in which they claim they were false. I understood he was going to give that information to us at least a week before the trial started. That was last May. I would like to have that.

Mr. Marcus: If we have failed in that respect, I apologize, but, on the other hand, we are actually offering certain portions of their answers to interrogatories.

The Court: Are you prepared to make a statement of the kind that he wants, or will you be prepared?

Mr. Marcus: We can be prepared.

The Court: All right. He will do that.

Mr. Jaureguy: Soon?

1086 The Court: Before he goes away.

Mr. Jaureguy: Very well.

The Court: Adjourn until 10:00 o'clock tomorrow morning.

(Adjournment.)

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The following proceedings were then had out of the presence of the Court:

Mr. Marcus: The Government offers in evidence the first sentence of Answer No. 16 to Interrogatories of the Oregon State Medical Society.

It is our understanding that the defendants have filed a list of members of the House of Delegates of the Council in response to interrogatories, and that these are being offered.

With respect to the Multnomah County Medical Society, we understand that with the responses to interrogatories the defendants have filed a list of doctors to whom membership has not been granted, in response to Interrogatory No. 11, and this list is offered.

We also offer the answer to No. 9 of the Answers to Interrogatories of the Multnomah County Medical Society, and the answer to No. 16 of the Interrogatories.

With respect to the Answers to Interrogatories of the Oregon Physicians' Service, the attachments are also offered. We offer as exhibits in evidence three documents relating to the disciplinary proceedings respecting Dr. W. H. Belknap.

1087 (Correspondence and Charge re: Dr. W. H. Belknap was thereupon received in evidence and marked Plaintiff's Exhibit No. 1945.)

Mr. Marcus: The Government offers in evidence the Minutes of the House of Delegates of the Oregon State Medical Society for September, 1948. After photostating particular pages of the Minutes which the Government deems relevant, the Government will substitute for the record those particular photostatic pages.

(Plaintiff's Exhibit No. 1946 reserved for photostatic pages of Minutes of House of Delegates, Oregon State Medical Society, September, 1948.)

Mr. Marcus: The Government offers in evidence the Minutes of the Yamhill County Medical Society, marked for identification as No. 1941, with the understanding that the Government will photostat the particular pages of these minutes it deems relevant and offer those photostats in evidence.

(Plaintiff's Exhibit No. 1941 reserved for photostatic copies of pages of Minute Book of Yamhill County Medical Society.)

Mr. Marcus: We will just photostat those pages.

Mr. Jaureguy: The whole Minute Book?

Mr. Marcus: We are offering it now with the understanding we will have photostats made of the particular pages we are interested in and substitute those pages.

1088 Mr. Jaureguy: Will you give me copies of the photostats?

Mr. Marcus: Yes.

(Adjournment)

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1089 Proceedings were resumed on Tuesday, November 8, 1949, at 11:00 A. M., out of the presence of the Court, as follows:

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Mr. Marcus: The Government is offering in evidence at this time exhibits marked for identification 1947 through 2030, which are documents turned over to Government counsel by defendants' counsel on Saturday, November 5, pursuant to the Court's ruling on November 1st.

(The documents referred to, consisting of photostatic copies of minutes of meetings, correspondence, transcripts of hearings, etc., pertaining to disciplinary proceedings, were marked as Plaintiff's Exhibits 1947 to 2030, inclusive.)

Mr. Marcus: We are also offering in evidence exhibits marked for identification 2031 and 2032, which consist of information as to membership in the Oregon State Medical Society and the county medical societies as taken from the records of the Oregon State Medical Society. The abbreviation "M. S." stands for "Military Service."

(The documents referred to, being membership lists of Oregon State Medical Society and county medical societies, were marked Plaintiff's Exhibits 2031 and 2032, respectively.)

Mr. Jaureguy: The offer having been made out of the presence of the Court, objections, if any, to these offered exhibits will be made in writing to the Court.

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1090 THURSDAY, NOVEMBER 10, 1949, Court reconvened pursuant to adjournment.

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TRANSCRIPT OF PROCEEDINGS:

Mr. Marcus: May it please the Court, defense counsel last Saturday turned over to us a number of documents pursuant to your Honor's ruling—on November 1st—and we selected some of those documents to offer into evidence, and Mr. Jaureguy and I were before the Reporter

outside of your Honor's presence and we had a number of documents put into evidence at that time, subject to Mr. Jaureguy's objections.

Yesterday defense counsel turned over some more documents. I have selected some of those documents to offer. I have had them marked. The numbers are 2033 to 2041, and at this time I would like to offer them in evidence.

The Court: They are admitted, 2033 to 2041, on the same terms as previously stated.

(Photostatic copy of letter dated Seaside, Oregon, March 22, 1937, O. C. Hagmeier, M. D., to Richard B. Adams, Oregon State Medical Society, thereupon marked Plaintiff's Exhibit No. 2033.)

(Photostatic copy of letter dated July 24, 1937, Oregon State Medical Society to Dr. E. D. Lamb, Klamath
1091 Falls, Oregon, thereupon received in evidence and marked Plaintiff's Exhibit 2034.)

(Photostatic copy of letter dated November 10, 1938, Southern Oregon Medical Service Association to Dr. Morris L. Bridgeman, Secretary, Oregon State Medical Society, thereupon received in evidence and marked Plaintiff's Exhibit 2035.)

(Photostatic copy of letter dated July 6, 1939, Oregon State Medical Society to Dr. DeWalt Payne, Secretary, Mid-Columbia Medical Society, thereupon received in evidence and marked Plaintiff's Exhibit No. 2036.)

(Photostatic copy of letter dated February 12, 1940, Oregon State Medical Society to Dr. Joseph P. Brennan, Pendleton, Oregon, thereupon received in evidence and marked Plaintiff's Exhibit No. 2037.)

(Photostatic copy of letter dated November 26, 1941, John C. Barton, Secretary, Columbia County Medical Society, to Clyde Foley, thereupon received in evidence and marked Plaintiff's Exhibit No. 2038.)

(Photostatic copy of letter dated December 28, 1942, Marion-Polk County Medical Society, to Oregon
1092 State Medical Society, thereupon received in evidence and marked Plaintiff's Exhibit No. 2039.)

(Photostatic copy of letter dated December 16, 1942, Yamhill County Medical Society to Oregon State Medical Society thereupon received in evidence and marked Plaintiff's Exhibit No. 2040.)

(Photostatic copy of letter dated June 25, 1941, Coos Bay Hospital Association to Oregon State Medical Society, with photostatic copy of letter dated June 9, 1941, Coos Bay Hospital Association to Oregon State Medical Society, etc., attached, thereupon received in evidence and marked Plaintiff's Exhibit No. 2041.)

Mr. Marcus: Also, your Honor, at this time I would like to have two other documents marked for identification.

(Copy of Memorandum in re: Multnomah Medical Service Bureau, Executive Committee of Board of Directors, August 30, 1940, thereupon marked Plaintiff's Identification No. 2042.)

(Copy of letter dated August 21, 1940, C. L. Coyle, M. D., Medford, Oregon, to Oregon State Medical Society, thereupon marked Plaintiff's Identification No. 2043.)

1093 Mr. Marcus: While Mr. Jaureguy is looking at these documents I would like to make a statement leading up to the offer with respect to them.

I understand from your Honor's ruling that you desire to have the case concluded by the Government this week, and we certainly concur in that desire. During the past week, as I stated before, defense counsel has turned over to us a great many documents, I would say perhaps more than a thousand. I personally have gone through those documents and I must say that, with the exception of a very few documents, all of them relate to a period prior to 1940.

We would like to state for the record that it is our considered belief, in the very nature of things, there must be a good bit of correspondence during the last eight years, and I wish to call your Honor's attention to a few matters which point that out.

We had on the stand, during the course of the Government's presentation of its case, Dr. Holzman of the Eagles, and he testified with respect to disciplinary hearings and he brought with him a notice from the Multnomah County Medical Society.

Among the documents turned over to us by the defendants' counsel, or by the defendants, there were no documents relating to that incident whatsoever.

Also on the stand was Dr. Klingler who testified
1094 he had communicated with the Multnomah County Medical Society with respect to being admitted to the Society.

No such documents were turned over to us by defense counsel.

As I stated at the outset, your Honor, we do not propose to extend this case on the part of the Government, and I am making no request for any more proceedings to get further documents from the defendants. However, I do want to have that statement in the record as to what we have received and what we have not received.

With respect to these two documents which I have had marked for identification, it is our opinion that the Defendant Multnomah County Medical Society has the original of these documents in their possession. They were not turned over to us and, therefore, I would like to offer the copies in evidence.

Mr. Jaureguy: With respect to Exhibits 2038, 2033 and 2036, the defendants object on the ground that they are incompetent, irrelevant and immaterial and hearsay.

With respect to Exhibits 2042 and 2043, defendants object to them on the ground that they are not authenticated, that they purport just to be typewritten sheets of paper, and on the further ground that they are incompetent, irrelevant and immaterial and hearsay.

Mr. Marcus: I was waiting for that objection, your Honor. Your Honor may recall that, at the request of your Honor, we hired a girl to go down to the offices of these defendants and copy off the membership ma-
1095 terial they had. Attached to the cards respecting the individual doctors mentioned in these letters were the originals of these letters and, as I told your Honor, among the documents they turned over to us there were no such letters as these, or any other kind, from 1940, and that is why we are offering these letters.

If there is any question as to their authenticity, I will just ask the girl from downstairs to come up here and we will put her on the stand.

Mr. Jaureguy: Of course, your Honor, I was looking over these other documents when he was saying that, and it did not have my undivided attention. I do not recall that he said that to your Honor before, but I will take his word for it, and I will withdraw the objection that they are not properly authenticated but reserve the other objections.

The Court: They are admitted, subject to the objections.

(Documents heretofore marked Plaintiff's Identification Nos. 2042 and 2043 were thereupon received in evidence and marked PLAINTIFF'S EXHIBITS Nos. 2042 and 2043, respectively.)

Mr. Marcus: I have just a few things to say, your Honor, about defendants' objections applying to our exhibits.

The Court: Perhaps you want to be heard first on that. Do you want to be heard, Mr. Jaureguy?

Mr. Jaureguy: No, your Honor, I do not care to
1096 be heard any further than this statement which I have filed setting forth my objections, your Honor.

The Court: Unless you feel the urge to talk strongly, it won't be necessary, because I am going to admit them all, subject to the objections.

Mr. Marcus: All right, your Honor. I wonder if, for Mr. Jaureguy's sake as well as my own, and perhaps of the Court, I might mention this one thing: I think through error defense counsel has objected to the Minutes of the House of Delegates which appeared in Northwest Medicine.

The Court: He can correct that on the record, if he wants to.

You close, do you, Mr. Marcus?

Mr. Marcus: Yes, I think so, your Honor. I was going to take up two—.

The Court: The Government rests.

PLAINTIFF RESTS

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Mr. Marcus: Would your Honor now like me to present our statement with respect to what we think we have proved?

The Court: Yes, unless Mr. Jaureguy—Do you desire to be heard before Mr. Marcus speaks?

Mr. Jaureguy: No, I do not desire to be heard before he speaks. In fact, I would a little prefer that he proceed first. That would be my preference. I may say,
1097 however, we wish to file a motion, and we can either do it now or after he has made his statement.

Filing of Motion to Dismiss

The Court: Do you have the motion there?

Mr. Jaureguy: Yes.

The Court: A motion to dismiss?